Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	WC Docket No. 04-36
IP-Enabled Services	)	
	)	

COMMENTS OF THE UNITED TELECOM COUNCIL AND THE UNITED POWER LINE COUNCIL

Pursuant to Section 1.415 of the Federal Communications Commission ("FCC") Rules, the United Telecom Council ("UTC") and the United Power Line Council ("UPLC") (collectively "UTC/UPLC") hereby submit comments in response to the Notice of Proposed Rule Making in the above-referenced proceeding.[1]

I. Introduction

The UTC is the international trade association for the telecommunications and information technology interests of electric, gas and water utilities, pipeline companies and other critical infrastructure industries. Its members own, manage or control communications systems that support the safe, reliable, and effective delivery of essential public services to their customers. Many of the members of UTC also provide commercial telecommunications and broadband equipment and services

[1] IP-Enabled Services, *Notice of Proposed Rule Making,* WC Docket No. 04-36, 2004 WL 439260 *("IP NPRM*").

on either a wholesale or retail basis from large geographic service areas to isolated rural communities.

The UPLC is an alliance of utilities and their technology partners that are developing broadband over power line technology (BPL) in North America. Its mission is to drive the development of business, technical and regulatory solutions for BPL in a manner that enables all its members to succeed. The UPLC was created in recognition that significant trials are underway in various parts of North and South America. It was formed by the UTC as an organization to carry on and expand on the efforts of the UTC's Power Line Telecommunications Forum (UTC PLTF) that has been the primary resource for advocacy and information on BPL in North America since 1998. Virtually every utility and technology company that is either interested in or actively deploying BPL in the U.S. and Canada is a member of the UPLC.[2]

II. Background

The interests of the UTC/UPLC would be both directly and indirectly affected by rules applying to Internet Protocol (IP) -enabled services. Members of UTC are interested as both users and providers of IP-enabled services. For example, utilities are converting many of their communications systems from analog to digital, and at the same time are consolidating many communications systems. For these internal applications, IP enables the interoperability and enhanced functionality of

[2] The members of the UPLC are listed on the UPLC website at www.uplc.org.

critical infrastructure communications systems. Meanwhile, utilities also are using IP-enabled commercial communications services in order to improve business network capacity and to reduce capital and administrative operational costs.

Utilities also are deploying broadband services that themselves rely on IP-enabled services. For example, BPL systems all run on IP: VoIP is just one of the applications that BPL will offer, along with high-speed data and streaming audio and video. Because of IP, BPL systems are robust, scalable and flexible. As an all-IP network, BPL can leverage improvements in chipset processing technology to increase capacity and throughput. At the same time, configuration of BPL networks is easier because of IP. Finally, BPL does not need massive head-ends or central offices, because IP moves the intelligence of the network to the end user. Of course, IP allows BPL and other broadband networks to support the proliferation of IP applications now reaching the market. As such, IP is essential to utility deployment of BPL and other broadband networks.

The IP NPRM goes beyond VoIP to apply to all IP-enabled services. It raises important issues such as the regulatory classification of services, jurisdictional considerations, and the impact of IP-enabled services on access charges, the Universal Service Fund (USF), and access by public safety agencies and the disabled. Finally, it considers other regulatory requirements that might be implicated, such as consumer protection, economic regulation and rural considerations. As these issues

would directly and indirectly affect IP-enabled services that UTC/UPLC members use, offer or carry, we are pleased to provide our perspective in these comments.

III. IP-Enabled Services Should Generally Be Classified as Information Services to Promote Further Development of the Technology, Support Social Policy Objectives and Encourage Access and Competition in Rural Areas Served by Utilities.

The advent of IP challenges the basis and the framework for regulating communications services. The central issue is distinguishing regulations that "respond to the dominance of centralized, monopoly-owned networks from those regulations designed to protect public safety and other important consumer interests."[3] The implication is that IP-enabled services may diminish or eliminate altogether the basis for the former (i.e. economic) regulations; but that the latter (i.e. social) regulations may be as much if not more important as more and more traffic and services run over IP.

UTC/UPLC submits that the FCC need not necessarily go down divergent regulatory paths towards IP. Instead, economic regulation of IP-enabled services may be minimized without necessarily having to impose additional social policy regulations in order to ensure USF or to promote public safety and disabled access.

Minimizing economic regulations of IP-enabled services will stimulate continued growth and development of the technology and the availability of services to all Americans. At the same time, IP-enabled

[3] IP NPRM at ¶ 36.

services reduce capital costs, operate more efficiently and provide enhanced capabilities compared with legacy systems.

With respect to social regulations, the cost savings from implementing IP-enabled services, particularly on local networks where public switched telephone network (PSTN) costs are highest, would reduce overall USF requirements. These savings could offset any losses in funding for USF that results from traffic migrating from circuit-switched to IP-enabled services. Likewise, cost savings and enhanced capabilities of IP-enabled services may promote rather than impair public safety and disabled access to telecommunications. Therefore, UTC/UPLC applauds the FCC for its initiative in taking a leading role on the issue of IP-enabled services. At the same time, UTC/UPLC cautions against imposing regulations that may be unnecessary or that are based upon the current state of technology.

The FCC appears to be taking the right approach toward minimizing regulations; UTC/UPLC recommends strongly that IP-enabled services generally should be treated as an "Information Service".[4] However, we defer from categorizing certain IP-enabled services and

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[4] *See* 47 U.S.C. § 153(20) (defining an information services as the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.)

commenting on the appropriate legal classification of each one at this time. [5]

In any event, IP-enabled services used by utilities and other critical infrastructure industries to enhance and enable private telecommunications networks should continue to be free from regulation.[6] These networks are not used to provide telecommunications service, nor are they replacements for traditional voice telephony.[7] In addition, technical and administrative costs would outweigh the benefits of forcing these networks to comply with common carrier requirements such as 911/E911 location or provisions of the Communications Assistance for Law Enforcement Act (CALEA).[8] Restrictive regulation of private IP-enabled networks also would discourage utilities both from deploying systems and from offering capacity to others, which could impair access

[5] *See IP NPRM* at ¶ 37, 42 (listing various categories of IP-enabled services and inviting comment on the proper legal classification and regulatory treatment of each specific class of IP enabled service identified).

[6] *See* Comments of We Energies in WC Docket No. 04-36 (filed May 27, 2004).

[7] *See* 47 U.S.C. § 152(46) (defining a telecommunications service as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public regardless of the facilities used). Utility private networks primarily support core services, and are not offered to the public at large. *See also* IP NPRM at ¶ 36 (stating that the FCC seeks to distinguish among various IP-enabled services by distinguishing those that might be viewed as replacements for traditional voice telephony from other services that might not).

[8] *See Revision of the Commission's Rules to Ensure Compatibility with 911 and E911 Capability*, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 94-102, FCC 03-290 at ¶50 (released Dec. 10, 2003)(finding that national rules requiring MLTS to provide 911 capability would impose unnecessary regulatory burdens). *But see Comment Sought on CALEA*, Public Notice, DA 04-700, 2000 WL 486215 (inviting comment on a petition seeking declaratory ruling that broadband and broadband telephony are subject to CALEA); *and see* Comments of the United States Department of Justice in ET Docket No. 04-37 (filed May 3, 2004)(stating that CALEA requirements should apply to BPL).

and competition in the many rural and underserved areas in which utility entities offer the best, if not only, chance of advanced services to the general public. This is especially true of municipal and cooperative utilities.

Conversely, the deployment of broadband networks by municipal utilities would be encouraged if their IP-enabled service offerings were treated as information services. This is especially true in states that restrict or prohibit municipal utilities from offering telecommunications services. Even though municipalities cannot seek FCC preemption of state laws that prohibit them from offering telecommunications,[9] municipalities could conceivably still offer IP-enabled services in those states if those services were classified as information services. Therefore, UTC/UPLC urges the Commission to treat IP-enabled services as information services in order to encourage, and indeed allow, utilities to promote universal affordable broadband access for all Americans.

[9] Nixon v. Missouri Municipal League, 124 S. Ct. 1555 (2004) (holding that Section 253 of the Communications Act does not authorize the FCC to preempt state laws that restrict municipalities and political subdivisions from offering telecommunications).

IV. Conclusion

WHEREFORE, THE PREMISES CONSIDERED, UTC/UPLC is pleased to provide these comments on the NPRM.

Respectfully submitted,

UTC/UPLC

By: /s/
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